

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1501 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

MARUTI TRAVELS

Versus

O N G C LTD

Appearance:

DR MUKUL SINHA for Petitioner
Barrister RAJNI H MEHTA with NIRAV C THAKKER for
Respondents No. 1, 2 and 3
None present for Respondent No. 4
MR HARDIK C RAWAL for Respondent No. 5

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 24/07/1999

ORAL JUDGEMENT

1. The petitioner has made a grievance in this special civil application under Article 226 of the Constitution that the action of the respondent - O.N.G.C. to offer the contract to respondent No.4 in relation to the tender notice, annexure 'I' is illegal and arbitrary. Other grievance has been made that Clause 1.03 of B.E.C.

is discriminatory, illegal and violative of Article 14 of the Constitution of India.

2. The respondent-O.N.G.C. vide their tender notice dated 18th August, 1998 invited the tenders for hire of Mobile Pumping Units. The petitioner submitted its tender duly filled in along with necessary documents, E.M.D. etc. It is the say of the petitioner that it has come to know that the existing Contractor in collusion with some official of the Corporation is trying to get rejected the quotation of some of the tenderers including the petitioner. It wrote a letter to the respondent-Corporation on 15th November, 1998. The Corporation in its turn vide letter dated 20th November, 1998 asked for certain clarifications which were provided by the petitioner vide its letter dated 26th November, 1998. It is the grievance of the petitioner that thereafter it had not heard anything from the respondent-Corporation. It is learnt that the respondent-Corporation has excluded the price bid of the petitioner and opened the price bid of three other bidders including the respondent No.4 who is the existing contractor. The petitioner stated that the respondent No.4 has quoted much higher amount than what quoted by the petitioner i.e. about Rs.29000/- per month per unit. It is the grievance of the petitioner that the respondent-Corporation has excluded its price bid only with a view to favour the existing contractor. It appears, what the petitioner submitted, that its price bid was excluded on wrong interpretation of clause 1.03 of B.E.C.. Summing up its grievances the petitioner submitted that by accepting the price bid of the respondent No.4 the respondent - Corporation would be put to loss of Rs.29000/- per month per unit of Mobile Pumping Units. Hence, this special civil application before this Court.

3. In para-(g) at page no.15 of the memo of the petition, the petitioner submitted that the exclusion of the petitioner from the price bid is also against the public interest. On acceptance of the price bid of the respondent No.4, the Corporation has to pay around Rs.32 lacs more during the contract period.

4. This writ petition is contested by the respondents No.1, 2 and 3 and reply to the special civil application has been filed. The petitioner filed rejoinder to the same. Then comes the additional affidavit reply of the respondent No.2. Then further affidavit in rejoinder of the petitioner. Further additional affidavit reply of the respondent No.2. The

parties have produced on the record of this special civil application more than necessary pleadings.

5. Haria Oil Field Services Ltd. filed civil application No.5888/99 in this special civil application. The applicant has prayed that he may be impleaded as respondent No.5 in this special civil application as it is a necessary and proper party to the same. This applicant was one of the tenderers and the Corporation has decided to allocate work under the tender aforesaid to the applicant. Naturally any decision given in this special civil application may adversely affect the applicant and the learned counsel for the petitioner was also agreeable for its impleadment. This civil application was granted.

6. The petitioner's tender of price bid was lower in comparison to the price bid of respondents No.4 and 5. Its price bid was of Rs.99,999/- per month per unit.

7. When this matter came up for admission and as my memory goes, before impleadment of respondent No.5 as party to this petition, the petitioner had given out its offer of Rs.95000/- per month per unit. This Court restrained the Corporation from finalizing the bid.

8. The whole basis of challenge of the action of the respondent-Corporation, if we go by the pleadings of the parties, is based on factual foundation that the Corporation is going to favour respondent No.4. This very basis of challenge is not tenable as this contract was not given to the respondent No.4. However, it is not in dispute that the price bid of tender, for the work as invited by the Corporation, of the respondent No.5 was higher than the petitioner. During the course of arguments today, the Court has put to the counsel for the respondent No.5 that the petitioner has given his offer of price bid of Rs.95000/- per month per unit, his client may have an opportunity of having his own price bid also. The Court also suggested the counsel for the petitioner that if the petitioner wants to reduce his price bid, it is also open to him. The counsel for the parties then in the Court started to talk with their clients who were present in the Court but the Court has observed that it is not a decision to be taken in hurry. This was only left out matter in the Board today and so the Court retired in Chamber giving about twenty minutes to the parties to have consultation in this respect with their advocates. After about twenty minutes when the Court started its function, the counsel for the respondent No.5 has given out that his client is ready to take this

contract on price bid of Rs.95000/- per unit per month. Then the counsel for the petitioner reduced its price bid to Rs.85000/-. The counsel for the respondent No.5 stated that in case in this manner the petitioner is going to reduce his price bid merely to deprive the respondent No.5 not to have the contract, even though at Rs.95000/per unit per month it may not be a profitable contract, there will be no end. The petitioner is reducing his price bid merely to see that the respondent No.5 may be ousted. This grievance of the respondent No.5 is correct and the counsel for the petitioner was asked by the Court to give his final bid and accordingly, Dr. Mukul Sinha has given out that his client is ready to take this contract at the price bid of Rs.80,000/- per month per unit. The counsel for the respondent after consultation with his client has stated that his client is ready to take this contract at price bid of Rs.80,000/- per unit per month.

9. Learned counsel for the petitioner insisted that this contract should have been given to the petitioner. At this juncture, he raised the following contentions:

- (i) that the respondent No.5 was not eligible to be given this contract.
- (ii) that the petitioner has been ousted from the competition wholly on erroneous and illegal approach. The petitioner possesses the eligibility of this contract as well as requisite number of Mobile Pumping Units. It has sufficient experience of this line.

10. Learned counsel for the respondent, Barrister Rajni H Mehta, contended that the petitioner was held to be ineligible for contract on the ground of it lacking the experience in the line. It has next been contended that in the matter of grant of contract of work, which is technical and needs skill and experience, the Corporation has to decide which of the parties will be able to do the work. The Corporation has considered the matter and after going through the papers of the petitioner it was not found to have the requisite experience. This is a decision by the expert persons and ordinarily this Court may not interfere.

11. The counsel for the respondent NO.5 supported the contentions made by Barrister Rajni H Mehta.

12. It is not in dispute that the respondent No.5 possessed three Mobile Pumping Units. The counsel for

the petitioner also stated that the petitioner possessed three Mobile Pumping Units in its name. The price bid of both the petitioner and the respondent No.5 is equal. So now the question centres which of the parties has to be preferred.

13. Clause 1.12 of the Techno Commercial B.E.C. provides that the firm should have two years experience in line for satisfactory performance of job or the firm should have memorandum of understanding with the firms who are working in the same line. (Emphasis Provided). It is further required by this clause that the firm should submit a copy of M.O.U as well as Experience Certificate of firm with whom M.O.U. has been done (Emphasis Supplied).

14. Both the petitioner and the respondent No.5 have no direct experience of line. Both have relied on the second clause of Condition No.1.12 of Techno Commercial B.E.C.. The respondent No.5 submitted M.O.U. with the firm Akash Road Lines whereas the petitioner submitted the M.O.U. with M/s HIMECH Industries. Both the petitioner and the respondent No.5 submitted a certificate showing that the firm with which they have M.O.U. are having experience of the line.

15. The respondent-Corporation in its reply has come up with the case that the experience of M/s. HIMECH was not in the line. I find from the reply to the special civil application that M/s HIMECH with whom the petitioner has entered into M.O.U. has job experience in drilling job, like release of Top plug, pumping of cement slurry (during casing of wells) which is not hazardous whereas the job involved in the tender in question are quite distinct to that of the drilling job, cementation job, e.g. line flushing of producing oil well, oil circulation job in well which is hazardous because it deals with highly inflammable oil. So on the basis of Bid Evaluation Criteria, the Corporation has not taken the petitioner to be an experienced person in the line.

16. Learned counsel for the petitioner has made an endeavour to satisfy this court that this is nothing but only a way in which the Corporation has by excluding the petitioner from the competition wants to maintain the monopoly of respondent No.4 indirectly through the respondent No.5. In fact what he contended that the respondent No.4 and 5 have made a cartel.

17. I do not find any substance in this contention for the obvious reason that it can also be easily

contended against the petitioner. He is not having the direct experience of line but it has also resorted to second clause of Condition 1.12 of Bid Evaluation Criteria. It has given out the M.O.U. with M/s. HIMECH and whether M/s. HIMECH has the experience of this line or not is a matter which has to be considered by the technical persons. If we go by the broad aspect of the matter and see the job experience of M/s. HIMECH with the job involved in the present tender, I am satisfied that it cannot be equated or cannot be said to be an experience of the firm in the line. Even by a man of ordinary prudence or one who is not a technical person or familiar by this job work can say that these are two distinct and separate jobs.

18. Otherwise also in such matters, the decision taken by the expert persons are not subject to judicial review by this Court. This court in such matters has very very limited power of judicial review. It cannot sit as an appellate authority above their decision and if on the face of it, the decision is not arbitrary or perverse, no interference is called for. The petitioner has no experience of the line and though the price bid of the petitioner and the respondent No.5 are equal and both are possessing three Mobile Pumping Units but on the point of experience, the petitioner has rightly been excluded from the consideration. The job of line flushing of producing oil well, oil circulation etc. are hazardous and the Corporation has to take all care to see that only the experienced persons are entrusted with this job. With high amplitude and voice with which the petitioner has come up before this Court, now no more remains, as the respondent No.5 has reduced its price bid to the extent of Rs.80,000/- only. There cannot be now any loss of public money and the Corporation will have an experienced person for this job for which the tenders were invited. In the matter of tenders which are basically contractual matters, otherwise also, the power of judicial review of this Court is very very limited. I do not find anything wrong in this decision of the Corporation to accept the bid of the respondent NO.5 on the question of experience.

19. In the result, this special civil application fails and the same is dismissed. However, instead of price bid which has been given by the respondent No.5 in its tender, the price bid will be of Rs.80,000/- per month per unit as what it has been given by it before this Court and on the condition of contract also that it will produce the documents of three Mobile Pumping Units of its own ownership. Rule is discharged. Interim

relief granted by this Court stands vacated. Parties to
bear their own costs.

zgs/-